

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reduction of)	
Penalty of:)	
)	
)	
ARTIT G. VANICHSOMBAT, M.D.)	Case No. 8002014003824
)	
)	OAH No. 2014090639
Physician's and Surgeon's)	
Certificate No. A 77014)	
)	
Petitioner.)	
_____)	


DECISION

The attached Proposed Decision is hereby adopted by the Medical Board of California, Department of Consumer Affairs, State of California, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on February 13, 2015.

IT IS SO ORDERED January 16, 2015.

MEDICAL BOARD OF CALIFORNIA



Dev Gnanadev, M.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reduction of
Penalty of:

ARTIT G. VANICHSOMBAT, M.D.,

Physician's and Surgeon's Certificate
Number A 77014,

Petitioner.

Case No. 800-2014-003824

OAH No. 2014090639

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on November 10, 2014, at Los Angeles, California.

Artit G. Vanischsombat, M.D., (Petitioner) represented himself.

Tan N. Tran, Deputy Attorney General, represented the Attorney General of the State of California pursuant to the provisions of Government Code Section 11522.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. The Medical Board of California (Board) issued Physician's and Surgeon's Certificate Number A 77014 to Petitioner on November 2, 2001. The certificate is renewed and current with an expiration date of May 31, 2015.

2. By its Decision effective May 17, 2010, the Board revoked Petitioner's certificate, stayed the revocation, and placed him on probation for five years under terms and conditions. Petitioner seeks early termination of his probation.

3. In its Decision, the Board made the following Findings relevant to these proceedings, all of which are incorporated herein as additional Findings:

4(a). On May 30, 2007, in the Superior Court for the State of California, County of Los Angeles, Case Number 6IG04187, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or more), a crime which is substantially related to the qualifications, functions and duties of a licensed physician and surgeon.

4(b). Respondent's sentence was suspended, and he was placed on summary probation for 36 months under terms and conditions which included payment of fines and fees totaling \$1,468, and completion of an AB-541 program (three-month, first offender program). Respondent was also ordered to serve 13 days in jail, with credit for one day served, or to perform 13 days of CalTrans work in lieu of jail time, and to refrain from driving a motor vehicle with any measurable amount of alcohol in his system.

4(c). The facts and circumstances surrounding Respondent's 2007 conviction are as follows: On September 24, 2006, while Respondent was not on duty or on call, he had four alcoholic beverages at a club with friends. At approximately 11:50 p.m., California Highway Patrol officers stopped Respondent in his vehicle for speeding on the freeway. One of the officers detected the odor of alcohol on Respondent's breath and observed that Respondent's eyes were red and watery. Respondent was administered field sobriety tests, which he failed.

5(a). On April 21, 2009, in the Superior Court for the State of California, County of Los Angeles, Case Number 8MP11982, Respondent was convicted, on his plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or more), a crime which is substantially related to the qualifications, functions and duties of a licensed physician and surgeon.

5(b). At the sentencing hearing, Respondent admitted to his prior conviction in Case Number 6IG04187. Respondent's sentence was suspended, and he was placed on summary probation for 60 months under terms and conditions which included completing an 18-month, second-offender alcohol counseling program, and serving 96 hours in jail, with credit for 24 hours served. Respondent was ordered to pay fines and fees totaling \$1,703, or to serve 13 days in jail in lieu of fine payment, or to perform 13 days of CalTrans work in lieu of the fine or jail time. Respondent was again ordered to refrain from driving a motor vehicle with any measurable amount of alcohol in his system.

5(c). The facts and circumstances surrounding Respondent's 2009 conviction are as follows: On September 13, 2008, while Respondent was off duty and not on call, he drank four alcoholic beverages while at a party with

friends. That night, Respondent was pulled over by a Los Angeles Police Department officer for traveling on the wrong side of the street.¹ During the traffic stop, the officer observed Respondent exhibiting signs of intoxication, and Respondent admitted drinking one beer. Respondent was administered field sobriety tests and failed the tests.

6. At the administrative hearing, Respondent explained that, after his first conviction, he “put together a plan to make sure it would not happen again.” His plan was to have one or two alcoholic drinks in a one-hour span and then to refrain from drinking for the rest of night. However, on the night of September 13, 2008, he “got caught up in the situation,” and after two drinks, his friends said “here have another” and convinced him that the drinks were watered down. Respondent “wanted to believe it,” and figured that “four drinks equaled to two,” and felt he was “fine” to drive home. He now realizes his “plan did not work so well.” With his second conviction, he realized that he needed to “[take] it seriously” and “could not blame it on bad luck.” He agreed that he engaged in extremely bad judgment.

7. Upon being placed on probation in 2009, Respondent enrolled in the required 18-month alcohol education program. He has completed 10 months of that program which involves weekly sessions alternating between a two-hour group session one week and a 15-minute individual counseling session the next week.

8. At the administrative hearing, Respondent admitted that he did not learn from the three-month first-offender program. However, the instructor in his 18-month program “was different.” When the instructor asked “When was the decision made to get a DUI?,” Respondent felt enlightened and realized that the decision was made before he even left his home. He now understands that, while it is legal to drink and legal to drive, mixing the two “can cause issues,” and “even one drink is not safe.” According to Respondent, “it is not worth it to get caught up in that situation again.”

9. From his 18-month program, Respondent has learned the physiological and legal ramifications of drinking and driving and various methods for preventing it. He has worked to develop new a plan “to make sure these mistakes never happen again.”

¹ While the parties spent a large amount of hearing time on establishing whether Respondent’s westbound vehicle actually crossed the double yellow lines and entered the eastbound lanes, this issue is immaterial. Regardless of the reason for the traffic stop, Respondent was subsequently arrested and convicted of driving with a blood alcohol content of .08 percent or more.

10. Respondent has abstained from drinking alcohol for over a year, and “says no every time” his friends invite him to drink. As part of his 18-month program, he attends Alcoholics Anonymous (AA) meetings every other week.

11. Respondent’s new plan involves making an assessment of his activities prior to leaving the house and deciding “what is going to happen that night.” He previously “had a hard time saying no to people,” but now has “[drawn] the line” and separates drinking and driving so that they are “completely mutually exclusive.” If he is driving, he will say “no,” and there will be no alcohol drinking, “not even one sip.” If he does decide to drink again and is not on any monitoring plan, he has been practicing scenarios where he takes cabs or public transportation.

12. In November 2008, Respondent voluntarily entered Pacific Assistance Group (PAG), a chemical dependency monitoring group for physicians and other health care professionals. The PAG program includes clinical evaluations, random urine testing and support groups.

13. Respondent’s PAG support group facilitator, James Conway (Conway) had previously been a support group facilitator for the Board’s (now defunct) Diversion Program from 1996 until 2008. When the Board’s Diversion Program was closing down, Conway and other facilitators throughout the state joined to form PAG, which recreated a similar monitoring program in the private sector.

14. Conway met with Respondent in November 2008, and referred him to psychiatrist and addiction specialist, Richard Sandor, M.D.

15(a). Dr. Sandor has been licensed to practice medicine in California since 1973. He graduated from the University of Southern California School of Medicine, and completed a residency in psychiatry at the Neuro-Psychiatric Institute at the University of California, Los Angeles (UCLA). He is board certified in psychiatry/neurology, with the added qualification in addiction psychiatry. He has practiced in the area of psychiatry and addiction medicine since 1988 and currently treats individuals with addiction disorders.

15(b). Dr. Sandor conducted a 90-minute psychiatric and addiction evaluation of Respondent in December 2008. Dr. Sandor concluded that Respondent “does not meet criteria for any substance abuse or other psychiatric diagnosis.”

15(c). Dr. Sandor testified credibly on Respondent’s behalf. He opined that Respondent is not an alcoholic. He understands that Respondent sustained two DUI convictions, but maintained that the DUIs, by themselves,

while significant, are not sufficient evidence of alcohol abuse or alcoholism. He agreed that Respondent is guilty of incredibly poor judgment in putting himself and the public at risk. However, he noted that “bad judgment on two occasions does not an addiction make.”

16. Based on Dr. Sandor’s evaluation, and Conway’s discussion with Respondent, Conway determined a monitoring plan for Respondent. This monitoring plan includes random urine testing, averaging two tests a month, beginning January 2009. Respondent is required to check in by telephone or online every day to determine whether he will be required to submit to a urine test that day. He has called in every day, has never missed a test, and has never tested positive.

17. Conway testified credibly on Respondent’s behalf at the administrative hearing. Respondent has met with Conway on a monthly basis since November 2008. When they meet, they revisit the idea that “this is a black and white issue,” and “the bright line is, if you are . . . going to be driving, you don’t drink.” Conway believes Respondent will “stay on the other side of the bright line.” Based on his experience and training and his involvement with Respondent, Conway believes that Respondent’s risk of making the same mistake is much lower.

18. In August 2009, Respondent entered into an agreement with the hospital at which he provides services. According to that agreement, Respondent agreed to: “provide ‘random’ or ‘for cause’ breathalyzer, &/or urine tests for drug/alcohol screening” as directed by the hospital’s Chief Medical Officer or his designee; authorize open communication between the hospital and Conway and Dr. Sandor; notify the hospital when his urine monitoring has been discontinued; and continue to participate and meet all the requirements of the monitoring program. Any positive urine test could result in Respondent’s immediate suspension. The agreement is to remain in effect for two years or until the hospital determines that monitoring is no longer required, whichever comes first.

[¶] . . . [¶]

20. Respondent is 34 years old and engaged to be married. He graduated from Northwestern University Medical School and completed a residency in anesthesiology at UCLA. He is a board certified anesthesiologist, and has been licensed to practice medicine in California since 2001. He is currently a partner with the California Anesthesia Associates.

21. Respondent has no history of patient complaints or malpractice awards.

22. Respondent acknowledges that the plan he devised after his first conviction was “a huge failure.” He stated, “I thought I learned my lesson, but the lesson was not learned the first time.” However, he knows now “how to say no,” and be “responsible,” regardless of peer pressure. Respondent insisted, “It took a while to learn [my lesson], but I learned it well this time.”

4. Petitioner presents as very earnest and personable. He was highly respectful of the Board and these proceedings. It has now been four and one-half years since the Board placed Petitioner on probation. During that period Petitioner has complied with each and every term, including submitting to random urine screenings. He has had no positive results. As noted above, Petitioner had been screened, and did not have any positive findings, for two years before the Board put him on probation.

5. Since his last hearing Petitioner has gotten married and has two children. He stated that he is grateful to still have his “profession and career.” His family is a strong support for him. He has no craving for alcohol, even at social events where it is free and plentiful. Andy Hong, M.D., who is on the staff of Long Beach Memorial Hospital, as is Petitioner, wrote a letter of support in which he stated:

In 2010, Dr. Vanichsombat did notify me that he was placed on probation regarding his DUI offenses. I have seen him socially on a regular basis since the probation start date and I have not witnessed him drinking alcohol or taking any illicit drugs during this time period. When alcohol is in his presence, he does not appear to be craving [it]. In 2012, he disclosed to me that his mother had health problems regarding her liver.^[2] I believe all these factors will motivate him to abstain from alcohol permanently.

Since his offense, I know that Dr. Vanichsombat has continued to advance his career. He has participated in the trauma service committee at Long Beach Memorial. He also served as Vice Chairman of the pediatric anesthesiology department. He is currently the acting chairman of the pediatric anesthesiology department. I have never seen or heard of any issues regarding his clinical competency. In fact, I believe his group has significant trust in his clinical judgment to appoint him to a leadership role. Since 2010, Dr. Vanichsombat has shown significant personal growth. He knows that his career was compromised. He has learned from his mistakes and he has several reasons to motivate him so this situation is not repeated.

6. Petitioner was permitted to retain his certification from the American Board of Anesthesiology (ABA), and to sit for the recertification examination despite his probationary

² Respondent testified that the issue of his mother’s liver problem, though not alcohol related, “spooked” him.

status.³ In light of this, the length of time he has been drug and alcohol free, the stability of his family life, the respect in which he is held by his colleagues, and the short period of time remaining, the public interest will not be adversely affected by terminating Petitioner's probation.

CONCLUSIONS OF LAW

Statutory Authority

1. Business and Professions Code section 2307 provides, in part:

(a) A person whose certificate has been surrendered while under investigation or while charges are pending or whose certificate has been revoked or suspended or placed on probation, may petition the board for reinstatement or modification of penalty, including modification or termination of probation.

(b) The person may file the petition after a period of not less than the following minimum periods have elapsed from the effective date of the surrender of the certificate or the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license surrendered or revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license surrendered or revoked for mental or physical illness, or termination of probation of less than three years.

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since

³ Typically a specialty certifying board will not permit a licensee to apply either for certification or recertification if the licensee is on a state-board probation. Here the ABA determined that Petitioner's underlying conduct was not sufficiently egregious as to deny him certification.

the disciplinary penalty was imposed.

(d) The petition may be heard by a panel of the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the board or the California Board of Podiatric Medicine, as applicable, which shall be acted upon in accordance with Section 2335.

(e) The panel of the board or the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued from time to time as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(f) The administrative law judge designated in Section 11371 of the Government Code reinstating a certificate or modifying a penalty may recommend the imposition of any terms and conditions deemed necessary.

Regulatory Authority

2. California Code of Regulations, title 16, section 1360.2 provides in part:

When considering a petition for reinstatement of a license, certificate or permit holder pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a

crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

The Burden and Standard of Proof

3. In a proceeding to restore a disciplined professional license or a petition for penalty relief, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored or be relieved from further requirements of probation. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

4. A person seeking reinstatement or penalty relief must present strong proof of rehabilitation and a sufficient showing of rehabilitation to overcome the Board's former adverse determination. (See, *Hippard v. State Bar of California* (1989) 49 Cal.3d 1084, 1092-1093.)

5. The standard of proof is clear and convincing evidence. (*Hippard v. State Bar of California, supra*, 49 Cal.3d at 1092.)

Relevant Factors in Determining Rehabilitation

6. Petitioner has no other disciplinary record, which is a mitigating factor. (See, *Segretti v. State Bar of California* (1976) 15 Cal.3d 878, 888.)

7. Petitioner's good reputation and the respect accorded him within the medical community evidences that he is well along in the process of rehabilitation. (See, *In re Dedman* (1976) 17 Cal.3d 229, 234.)

Cause Exists to Grant the Petition and Terminate Probation

8. Cause exists under Business and Professions Code section 2307 and under California Code of Regulations, title 16, section 1360.2, to grant the petition and to terminate the license discipline that was imposed by the Board. Petitioner was placed on probation for a period of five years. Four years have passed since probation was imposed. During the period of probation, Petitioner has done everything that was required of him. He has taken steps to ensure that conduct similar to that resulting in the filing of the Accusation will not recur. He demonstrates a mature appreciation of the nature of his misconduct and has also established a six and one-half year track record of abstinence. He has much of value to offer

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his patients and his colleagues. He is a safe and prudent physician. Petitioner benefited fully from his probation. Continuing probation is unnecessary given Petitioner's rehabilitation. California's public interest does not require the continuation of Petitioner's probation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The petition of Artit G. Vanischsombat, M.D. for termination of probation is granted. Physician's and Surgeon's Certificate Number A 77014 is fully restored.

Date: 11-26-14


RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings